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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

KAREN LOUISE MCCLOSKEY
A.K.A. LOUISE MCCONKIE
3615 Fieldview Court
Pleasanton, California 94588
Registered Nurse License No. 389708
Public Health Nurse Certificate No. 39969

Respondent.

Case No. 2007-74

OAH No. 2008050047

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by
the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 18, 2008.

It is so ORDERED August 18, 2008.

LaTranene M Tate

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 WILBERT E. BENNETT
Supervising Deputy Attorney General
3 CAROL S. ROMEO, State Bar No. 124910
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612-0550
Telephone: (510) 622-2141
6 Facsimile: (510) 622-2270

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 KAREN LOUISE MCCLOSKEY
13 A.K.A. LOUISE MCCONKIE
3615 Fieldview Court
Pleasanton, California 94588
14 Registered Nurse License No. 389708
Public Health Nurse Certificate No. 39969

15 Respondent.

Case No. 2007-74

OAH No. 2008050047

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
21 the Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
23 by Carol S. Romeo, Deputy Attorney General.

24 2. Respondent Karen Louise McCloskey, also known as Louise McConkie
25 (Respondent) is represented in this proceeding by attorney Edgardo Gonzalez, Esq., whose
26 address is Law Offices of Edgardo Gonzalez, 1300 Clay Street, Suite 600, Oakland, California
27 94612.

28 //

3. On or about August 31, 1985, the Board of Registered Nursing issued Registered Nurse License No. 389708 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.

4. On or about May 31, 1986, the Board of Registered Nursing issued Public Health Nurse Certificate No. 39969 to Respondent. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.

JURISDICTION

5. Accusation No. 2007-74 was filed before the Board of Registered Nursing (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 29, 2006. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2007-74 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2007-74. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2007-74.

4 10. Respondent agrees that her Registered Nurse License and Public Health
5 Nurse Certificate are subject to discipline and she agrees to be bound by the Board of Registered
6 Nursing (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

7 CONTINGENCY

8 11. The parties hereto acknowledge that this Stipulated Settlement constitutes
9 an offer in settlement to the Board and is not effective until adoption by said agency.

10 12. The parties hereto stipulate that in the event that this Stipulated Settlement
11 is not adopted by the Board, nothing herein recited shall be construed as a waiver of respondent's
12 right to a hearing or as an admission of the truth of any of the matters charged in the Accusation,
13 and the Board shall not be disqualified from further action by having considered this matter. By
14 signing the stipulation, Respondent understands and agrees that she may not withdraw her
15 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon
16 it.

17 13. The parties understand and agree that facsimile copies of this Stipulated
18 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
19 force and effect as the originals.

20 14. In consideration of the foregoing admissions and stipulations, the parties
21 agree that the Board may, without further notice or formal proceeding, issue and enter the
22 following Disciplinary Order:

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that Registered Nurse License No. 389708, issued to
25 Respondent, and Public Health Certificate No. 39969, issued to Respondent, are revoked.
26 However, the revocations are each stayed and Respondent is placed on probation for three (3)
27 years on the following terms and conditions.

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1 **Severability Clause.** Each condition of probation contained herein is a separate
2 and distinct condition. If any condition of this Order, or any application thereof, is declared
3 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
4 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
5 and enforceable to the fullest extent permitted by law.

6 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
7 A full and detailed account of any and all violations of law shall be reported by Respondent to
8 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
9 compliance with this condition, Respondent shall submit completed fingerprint forms and
10 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
11 as part of the licensure application process.

12 **Criminal Court Orders:** If Respondent is under criminal court orders, including
13 probation or parole, and the order is violated, this shall be deemed a violation of these probation
14 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

15 2. **Comply with the Board's Probation Program.** Respondent shall fully
16 comply with the conditions of the Probation Program established by the Board and cooperate
17 with representatives of the Board in its monitoring and investigation of the Respondent's
18 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
19 within no more than 15 days of any address change and shall at all times maintain an active,
20 current license status with the Board, including during any period of suspension.

21 Upon successful completion of probation, Respondent's licenses shall be fully
22 restored.

23 3. **Report in Person.** Respondent, during the period of probation, shall
24 appear in person at interviews/meetings as directed by the Board or its designated
25 representatives.

26 4. **Residency, Practice, or Licensure Outside of State.** Periods of
27 residency or practice as a registered nurse outside of California shall not apply toward a reduction
28 of this probation time period. Respondent's probation is tolled, if and when she resides outside

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1 of California. Respondent must provide written notice to the Board within 15 days of any change
2 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
3 returning to practice in this state.

4 Respondent shall provide a list of all states and territories where she has ever been
5 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
6 provide information regarding the status of each license and any changes in such license status
7 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
8 new nursing license during the term of probation.

9 5. **Submit Written Reports.** Respondent, during the period of probation,
10 shall submit or cause to be submitted such written reports/declarations and verification of actions
11 under penalty of perjury, as required by the Board. These reports/declarations shall contain
12 statements relative to Respondent's compliance with all the conditions of the Board's Probation
13 Program. Respondent shall immediately execute all release of information forms as may be
14 required by the Board or its representatives.

15 Respondent shall provide a copy of this Decision to the nursing regulatory agency
16 in every state and territory in which she has a registered nurse license.

17 6. **Function as a Registered Nurse.** Respondent, during the period of
18 probation, shall engage in the practice of registered nursing in California for a minimum of 24
19 hours per week for 6 consecutive months or as determined by the Board.

20 For purposes of compliance with the section, "engage in the practice of registered
21 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
22 work in any non-direct patient care position that requires licensure as a registered nurse.

23 The Board may require that advanced practice nurses engage in advanced practice
24 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
25 Board.

26 If Respondent has not complied with this condition during the probationary term,
27 and Respondent has presented sufficient documentation of her good faith efforts to comply with
28 this condition, and if no other conditions have been violated, the Board, in its discretion, may

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1 grant an extension of Respondent's probation period up to one year without further hearing in
2 order to comply with this condition. During the one year extension, all original conditions of
3 probation shall apply.

4 7. **Employment Approval and Reporting Requirements.** Respondent
5 shall obtain prior approval from the Board before commencing or continuing any employment,
6 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
7 performance evaluations and other employment related reports as a registered nurse upon request
8 of the Board.

9 Respondent shall provide a copy of this Decision to her employer and immediate
10 supervisors prior to commencement of any nursing or other health care related employment.

11 In addition to the above, Respondent shall notify the Board in writing within
12 seventy-two (72) hours after she obtains any nursing or other health care related employment.
13 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
14 terminated or separated, regardless of cause, from any nursing, or other health care related
15 employment with a full explanation of the circumstances surrounding the termination or
16 separation.

17 8. **Supervision.** Respondent shall obtain prior approval from the Board
18 regarding Respondent's level of supervision and/or collaboration before commencing or
19 continuing any employment as a registered nurse, or education and training that includes patient
20 care.

21 Respondent shall practice only under the direct supervision of a registered nurse
22 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
23 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
24 are approved.

25 Respondent's level of supervision and/or collaboration may include, but is not
26 limited to the following:

27 (a) Maximum - The individual providing supervision and/or collaboration is
28 present in the patient care area or in any other work setting at all times.

1 (b) Moderate - The individual providing supervision and/or collaboration is in
2 the patient care unit or in any other work setting at least half the hours Respondent works.

3 (c) Minimum - The individual providing supervision and/or collaboration has
4 person-to-person communication with Respondent at least twice during each shift worked.

5 (d) Home Health Care - If Respondent is approved to work in the home health
6 care setting, the individual providing supervision and/or collaboration shall have person-to-
7 person communication with Respondent as required by the Board each work day. Respondent
8 shall maintain telephone or other telecommunication contact with the individual providing
9 supervision and/or collaboration as required by the Board during each work day. The individual
10 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
11 site visits to patients' homes visited by Respondent with or without Respondent present.

12 9. **Employment Limitations.** Respondent shall not work for a nurse's
13 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
14 traveling nurse, or for an in-house nursing pool.

15 Respondent shall not work for a licensed home health agency as a visiting nurse
16 unless the registered nursing supervision and other protections for home visits have been
17 approved by the Board. Respondent shall not work in any other registered nursing occupation
18 where home visits are required.

19 Respondent shall not work in any health care setting as a supervisor of registered
20 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
21 nurses and/or unlicensed assistive personnel on a case-by-case basis.

22 Respondent shall not work as a faculty member in an approved school of nursing
23 or as an instructor in a Board approved continuing education program.

24 Respondent shall work only on a regularly assigned, identified and predetermined
25 worksite(s) and shall not work in a float capacity.

26 If Respondent is working or intends to work in excess of 40 hours per week, the
27 Board may request documentation to determine whether there should be restrictions on the hours
28 of work.

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1 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
3 than six months prior to the end of her probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the
5 course(s). Respondent shall submit to the Board the original transcripts or certificates of
6 completion for the above required course(s). The Board shall return the original documents to
7 Respondent after photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
9 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of \$3,500.00. Respondent shall be permitted to pay these costs in a payment plan
11 approved by the Board, with payments to be completed no later than three months prior to the
12 end of the probation term.

13 If Respondent has not complied with this condition during the probationary term,
14 and Respondent has presented sufficient documentation of her good faith efforts to comply with
15 this condition, and if no other conditions have been violated, the Board, in its discretion, may
16 grant an extension of Respondent's probation period up to one year without further hearing in
17 order to comply with this condition. During the one year extension, all original conditions of
18 probation will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of her
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
21 aside the stay order and impose the stayed revocation of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has
23 been filed against Respondent's license or the Attorney General's Office has been requested to
24 prepare an accusation or petition to revoke probation against Respondent's license, the
25 probationary period shall automatically be extended and shall not expire until the accusation or
26 petition has been acted upon by the Board.

27 13. **License Surrender.** During Respondent's term of probation, if she ceases
28 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of

1 probation, Respondent may surrender her licenses to the Board. The Board reserves the right to
2 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
3 take any other action deemed appropriate and reasonable under the circumstances, without
4 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
5 will no longer be subject to the conditions of probation.

6 Surrender of Respondent's licenses shall be considered a disciplinary action and
7 shall become a part of Respondent's license history with the Board. A registered nurse whose
8 license has been surrendered may petition the Board for reinstatement no sooner than the
9 following minimum periods from the effective date of the disciplinary decision:

10 (1) Two years for reinstatement of a license that was surrendered for any
11 reason other than a mental or physical illness; or

12 (2) One year for a license surrendered for a mental or physical illness.

13 14. **Physical Examination.** Within 45 days of the effective date of this
14 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
15 physician assistant, who is approved by the Board before the assessment is performed, submit an
16 assessment of the Respondent's physical condition and capability to perform the duties of a
17 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
18 medically determined, a recommended treatment program will be instituted and followed by the
19 Respondent with the physician, nurse practitioner, or physician assistant providing written
20 reports to the Board on forms provided by the Board.

21 If Respondent is determined to be unable to practice safely as a registered nurse,
22 the licensed physician, nurse practitioner, or physician assistant making this determination shall
23 immediately notify the Board and Respondent by telephone, and the Board shall request that the
24 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
25 shall immediately cease practice and shall not resume practice until notified by the Board.
26 During this period of suspension, Respondent shall not engage in any practice for which a license
27 issued by the Board is required until the Board has notified Respondent that a medical
28 determination permits Respondent to resume practice. This period of suspension will not apply

1 to the reduction of this probationary time period.

2 If Respondent fails to have the above assessment submitted to the Board within
3 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
4 practice until notified by the Board. This period of suspension will not apply to the reduction of
5 this probationary time period. The Board may waive or postpone this suspension only if
6 significant, documented evidence of mitigation is provided. Such evidence must establish good
7 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
8 provided. Only one such waiver or extension may be permitted.

9 15. **Participate in Treatment/Rehabilitation Program for Chemical**
10 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
11 period or shall have successfully completed prior to commencement of probation a Board-
12 approved treatment/rehabilitation program of at least six months duration. As required, reports
13 shall be submitted by the program on forms provided by the Board. If Respondent has not
14 completed a Board-approved treatment/rehabilitation program prior to commencement of
15 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
16 a program. If a program is not successfully completed within the first nine months of probation,
17 the Board shall consider Respondent in violation of probation.

18 Based on Board recommendation, each week Respondent shall be required to
19 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
20 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
21 by the Board. If a nurse support group is not available, an additional 12-step meeting or
22 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
23 such attendance to the Board during the entire period of probation. Respondent shall continue
24 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
25 mental health examiner and/or other ongoing recovery groups.

26 16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
27 shall completely abstain from the possession, injection or consumption by any route of all
28 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when

1 the same are ordered by a health care professional legally authorized to do so as part of
2 documented medical treatment. Respondent shall have sent to the Board, in writing and within
3 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
4 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
5 medication will no longer be required, and the effect on the recovery plan, if appropriate.

6 Respondent shall identify for the Board a single physician, nurse practitioner or
7 physician assistant who shall be aware of Respondent's history of substance abuse and will
8 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
9 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
10 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
11 condition. If any substances considered addictive have been prescribed, the report shall identify a
12 program for the time limited use of any such substances.

13 The Board may require the single coordinating physician, nurse practitioner, or
14 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
15 addictive medicine.

16 17. **Submit to Tests and Samples.** Respondent, at her expense, shall
17 participate in a random, biological fluid testing or a drug screening program which the Board
18 approves. The length of time and frequency will be subject to approval by the Board.
19 Respondent is responsible for keeping the Board informed of Respondent's current telephone
20 number at all times. Respondent shall also ensure that messages may be left at the telephone
21 number when she is not available and ensure that reports are submitted directly by the testing
22 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
23 to the Board by the program and Respondent shall be considered in violation of probation.

24 In addition, Respondent, at any time during the period of probation, shall fully
25 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
26 tests and samples as the Board or its representatives may require for the detection of alcohol,
27 narcotics, hypnotics, dangerous drugs, or other controlled substances.

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1 If Respondent has a positive drug screen for any substance not legally authorized
2 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
3 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
4 from practice pending the final decision on the petition to revoke probation or the accusation.
5 This period of suspension will not apply to the reduction of this probationary time period.

6 If Respondent fails to participate in a random, biological fluid testing or drug
7 screening program within the specified time frame, Respondent shall immediately cease practice
8 and shall not resume practice until notified by the Board. After taking into account documented
9 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
10 Board may suspend Respondent from practice pending the final decision on the petition to
11 revoke probation or the accusation. This period of suspension will not apply to the reduction of
12 this probationary time period.

13 **18. Mental Health Examination.** Respondent shall, within 45 days of the
14 effective date of this Decision, have a mental health examination including psychological testing
15 as appropriate to determine her capability to perform the duties of a registered nurse. The
16 examination will be performed by a psychiatrist, psychologist or other licensed mental health
17 practitioner approved by the Board. The evaluator must have at least five (5) years of
18 addictionology treatment experience and must be approved by the Board. The examining mental
19 health practitioner will submit a written report of that assessment and recommendations to the
20 Board. All costs are the responsibility of Respondent. Recommendations for treatment, therapy
21 or counseling made as a result of the mental health examination will be instituted and followed
22 by Respondent.

23 If Respondent is determined to be unable to practice safely as a registered nurse,
24 the licensed mental health care practitioner making this determination shall immediately notify
25 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
26 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
27 practice and may not resume practice until notified by the Board. During this period of
28 suspension, Respondent shall not engage in any practice for which a license issued by the Board

1 is required, until the Board has notified Respondent that a mental health determination permits
2 Respondent to resume practice. This period of suspension will not apply to the reduction of this
3 probationary time period.

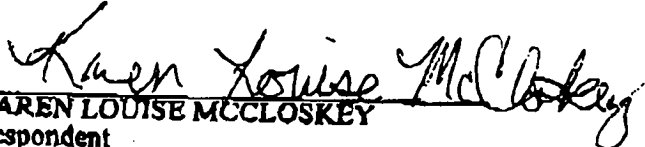
4 If Respondent fails to have the above assessment submitted to the Board within
5 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
6 practice until notified by the Board. This period of suspension will not apply to the reduction of
7 this probationary time period. The Board may waive or postpone this suspension only if
8 significant, documented evidence of mitigation is provided. Such evidence must establish good
9 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
10 provided. Only one such waiver or extension may be permitted.

11 19. **Therapy or Counseling Program.** Respondent, at her expense, shall
12 participate in an on-going counseling program until such time as the Board releases her from this
13 requirement and only upon the recommendation of the counselor. Written progress reports from
14 the counselor will be required at various intervals.

15 ACCEPTANCE

16 I have carefully read the above Stipulated Settlement and Disciplinary Order and
17 have fully discussed it with my attorney, Edgardo Gonzalez, Esq. I understand the stipulation
18 and the effect it will have on my Registered Nurse License and Public Health Certificate. I enter
19 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
20 and agree to be bound by the Decision and Order of the Board of Registered Nursing.

21 DATED: 6/11/08

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23 
24 KAREN LOUISE MCCLOSKEY
25 Respondent

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1 I have read and fully discussed with Respondent Karen Louisc McCloskey the
2 terms and conditions and other matters contained in the above Stipulated Settlement and
3 Disciplinary Order. I approve its form and content.

4 DATED: 6-11-08

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7 EDGARDO GONZALEZ, ESQ.
8 Attorney for Respondent

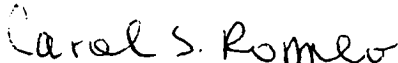
9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
12 Affairs.

13 DATED: June 11, 2008

14 EDMUND G. BROWN JR., Attorney General
15 of the State of California

16 WILBERT E. BENNETT
17 Supervising Deputy Attorney General

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19 CAROL S. ROMEO
20 Deputy Attorney General

21 Attorneys for Complainant
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Exhibit A
Accusation No. 2007-74

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1 BILL LOCKYER, Attorney General
of the State of California
2 MARGARET ANN LAFKO, State Bar No. 105921
Lead Supervising Deputy Attorney General
3 RONALD A. CASINO, State Bar No. 70410
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2068
Facsimile: (619) 645-2061
8
9 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:
14 KAREN LOUISE MCCLOSKEY AKA KAREN
LOUISE MCCONKIE
15 339 Sunrise Circle
Vista, CA 92084
16 Registered Nurse No. 389708
Public Health Nurse Certificate No. 39969
17
18 Respondent.

Case No. 2007-74

A C C U S A T I O N

19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant bring this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
23 Affairs.

24 **License History**

25 2. On or about August 31, 1985, the Board issued Registered Nurse License
26 Number 389708 to Karen Louise McCloskey, aka Karen Louise McConkie ("Respondent"). The
27 license was in full force and effect at all times relevant to the charges brought herein and will
28 expire on September 30, 2007, unless renewed. On or about May 13, 1986, the Board issued

1 Public Health Nurse Certificate Number 39969 to Respondent. The certificate will expire on
2 September 30, 2007, unless renewed.

3 STATUTORY PROVISIONS

4 3. Section 482 of the Business and Professions Code ("Code") states:

5 Each board under the provisions of this code shall develop criteria
6 to evaluate the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.
9 Each board shall take into account all competent evidence of rehabilitation
10 furnished by the applicant or licensee.

11 4. Section 490 of the Code states:

12 A board may suspend or revoke a license on the ground that the licensee
13 has been convicted of a crime, if the crime is substantially related to the
14 qualifications, functions, or duties of the business or profession for which
15 the license was issued. A conviction within the meaning of this section
16 means a plea or verdict of guilty or a conviction following a plea of nolo
17 contendere. Any action which a board is permitted to take following the
18 establishment of a conviction may be taken when the time for appeal has
19 elapsed, or the judgment of conviction has been affirmed on appeal, or
20 when an order granting probation is made suspending the imposition of
21 sentence, irrespective of a subsequent order under the provisions of Section
22 1203.4 of the Penal Code.

23 5. Section 493 of the Code states, in pertinent part:

24 Notwithstanding any other provisions of law, in a proceeding conducted
25 by a board within the department pursuant to law to deny an application
26 for a license or to suspend or revoke a license or otherwise take
27 disciplinary action against a person who holds a license, upon the
28 ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only
of that fact, and the board may inquire into the circumstances surrounding
the commission of the crime in order to fix the degree of discipline or
to determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question. . . .

6. Section 2750 of the Code provides, in pertinent part, that the Board may
discipline any licensee, including a licensee holding a temporary or an inactive license, for any
reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a
license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding

1 against the licensee or to render a decision imposing discipline on the license. Under Code
2 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
3 years after the expiration.

4 8. Section 118, subdivision (b), of the Code provides that the suspension,
5 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
6 proceed with a disciplinary action during the period within which the license may be renewed,
7 restored, reissued or reinstated.

8 9. Section 2761 of the Code states, in pertinent part:

9 The board may take disciplinary action against a certified or
10 licensed nurse or deny an application for a certificate or license for
any of the following:

11 (a) Unprofessional conduct, . . .

12 (f) Conviction of a felony or of any offense substantially
13 related to the qualifications, functions, and duties of a registered
14 nurse, in which event the record of the conviction shall be
conclusive evidence thereof.

15 10. Section 2762 of the Code states, in pertinent part:

16 In addition to other acts constituting unprofessional conduct within
17 the meaning of this chapter it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

18
19 (b) Use any controlled substance as defined in Division 10 (commencing
20 with Section 11000) of the Health and Safety Code, or any dangerous
21 drug or dangerous device as defined in Section 4022, or alcoholic
22 beverages, to an extent or in a manner dangerous or injurious to
himself or herself, any other person, or the public or to the extent
that such use impairs his or her ability to conduct with safety to the
public the practice authorized by his or her license.

23 (c) Be convicted of a criminal offense involving the prescription,
24 consumption, or self-administration of any of the substances
described in subdivisions (a) and (b) of this section, or the
25 possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which
26 event the record of the conviction is conclusive evidence thereof.

27
28 ///

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

REGULATIONS

12. Section 1444 of Title 16 of the California Code of Regulations ("Regulations") states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. Section 1445 of the Regulations states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

1 (b) When considering the suspension or revocation of a
2 license on the grounds that a registered nurse has been convicted
3 of a crime, the board, in evaluating the rehabilitation of such
4 person and his/her eligibility for a license will consider the
5 following criteria:

6 (1) Nature and severity of the act(s) or offense(s).

7 (2) Total criminal record.

8 (3) The time that has elapsed since commission of the act(s)
9 or offense(s).

10 (4) Whether the licensee has complied with any terms of
11 parole, probation, restitution or any other sanctions lawfully imposed
12 against the licensee.

13 (5) If applicable, evidence of expungement proceedings
14 pursuant to Section 1203.4 of the Penal Code.

15 (6) Evidence, if any, of rehabilitation submitted by the licensee.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (January 22, 2002 Criminal Convictions - Driving With .08% or
18 Greater of Blood Alcohol, Driving While License Suspended, and
19 No Proof of Financial Responsibility on November 19, 2001)

20 14. Respondent is subject to disciplinary action under Code sections 490, 493,
21 and 2761, subdivision (f), in that Respondent has been convicted of crimes substantially related
22 to the qualifications, functions or duties of a registered nurse, as follows:

23 15. On or about January 22, 2002, in the Colusa County Superior Court, in the
24 case entitled *People of the State of California v. Karen Louise McCloskey*, Case No. CR 41384,
25 Respondent was convicted by the court on her plea of no contest of violating Vehicle Code
26 section 23152(b) (driving with .08% or greater of blood alcohol), and on her plea of guilty of
27 violating Vehicle Code sections 14601.2 (driving while license suspended) and 16028(a) (no
28 proof of financial responsibility). The facts and circumstances of the convictions are as follows:

16 16. On or about November 19, 2001, Respondent drove a vehicle with .08% or
17 greater of blood alcohol, while her license was under suspension for a prior driving related
18 conviction, and without proof of financial responsibility.

19 17. On or about January 22, 2002, Respondent was sentenced to five (5) years
20 probation, one (1) year custody, \$3,220.00 in fines, two (2) year suspension of driver's license.

1 **SECOND CAUSE FOR DISCIPLINE**

2 (October 3, 2001 Criminal Conviction - Driving With .08% or
3 Greater of Blood Alcohol on August 13, 2001)

4 18. Respondent is subject to disciplinary action under Code sections 490, 493,
5 and 2761, subdivision (f), in that Respondent has been convicted of a crime substantially related
6 to the qualifications, functions or duties of a registered nurse, as follows:

7 19. On or about October 3, 2001, in the San Diego County Superior Court, in
8 the case entitled *People of the State of California v. Karen Louise McCloskey*, Case No. CN
9 133563, Respondent was convicted by the court on her plea of guilty of violating Vehicle Code
10 section 23152(b) (driving with .08% or greater of blood alcohol). The facts and circumstances of
11 the conviction are as follows:

12 20. On or about August 13, 2001, Respondent drove a vehicle with .08% or
13 greater of blood alcohol.

14 21. On or about October 3, 2001, Respondent was sentenced to three (3) years
15 probation, \$1,500.00 in fines, five (5) days public service, 90 day restriction on driving, and first
16 offender program.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (November 28, 2000 Criminal Conviction - Wet Reckless on August 29, 2000)

19 22. Respondent is subject to disciplinary action under Code sections 490, 493,
20 and 2761, subdivision (f), in that Respondent has been convicted of a crime substantially related
21 to the qualifications, functions or duties of a registered nurse, as follows:

22 23. On or about November 28, 2000, in the Riverside County Superior Court,
23 in the case entitled *People of the State of California v. Karen Louise McCloskey*, Case No.
24 PEM028029, Respondent was convicted by the court on her plea of guilty of violating Vehicle
25 Code section 23103.5 (Wet Reckless). The facts and circumstances of the conviction are as
26 follows:

27 24. On or about August 29, 2000, Respondent drove a vehicle with a
28 measureable amount of alcohol in her blood but less than .08% of blood alcohol.

1 25. On or about November 28, 2000, Respondent was sentenced to three (3)
2 years probation, \$505.00 in fines, and twelve (12) hour DUI program's alcohol and drug
3 education session.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Use of Alcohol to an Extent or in a Manner Dangerous or Injurious
6 to Herself, Another Person, or the Public on November 19, 2001,
7 August 13, 2001, and August 29, 2000)

8 26. Respondent is subject to disciplinary action under Code section 2762(b),
9 in that on November 19, 2001, August 13, 2001, and August 29, 2000, Respondent committed
10 unprofessional conduct by using alcohol to an extent or in a manner dangerous or injurious to
11 herself, another person, or the public as set forth in paragraphs 14 through 25, above.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 (Convicted of a Criminal Offense Involving the Consumption of Alcohol
14 on January 22, 2002, October 3, 2001, and November 20, 2000)

15 27. Respondent is subject to disciplinary action under Code section 2762(c), in
16 that on January 22, 2002, October 3, 2001, and November 20, 2000, Respondent committed
17 unprofessional conduct by suffering convictions involving the consumption of alcohol, as set
18 forth in paragraphs 14 through 25, above.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

22 1. Revoking or suspending Registered Nurse License Number 389708 issued
23 to Karen Louise McCloskey, also known as Karen Louise McConkie.

24 2. Ordering Karen Louise McCloskey, also known as Karen Louise
25 McConkie, to pay the Board of Registered Nursing the reasonable costs of the investigation and
26 enforcement of this case, pursuant to Code section 125.3; and

27 ///

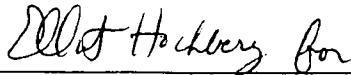
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3. Taking such other and further action as deemed necessary and proper.

DATED: September 29, 2006



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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